



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2005

Ms. Patricia E. Carls
Brown & Carls L.L.P.
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2005-02148

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220016.

The Georgetown Police Department (the "department"), which you represent, received a request for information relating to a specified incident number. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that you have not fully complied with section 552.301 of the Government Code in requesting this decision. Under section 552.301(b), a governmental body that receives a request for information that it wishes to withhold from the public must ask for the attorney general's decision and state the exceptions that it claims within ten business days after receiving the request. You inform us that the department received the present request for information on December 21, 2004. Therefore, you were required to request this decision and state the exceptions that you claim no later than January 5, 2005. Although your initial request for this decision was timely submitted, your supplemental brief of March 1, 2005 asserts new claims under section 552.108 and the common-law informer's privilege. Both section 552.108 and the common-law informer's privilege are discretionary claims that a governmental body may waive. *See* Open Records Decision Nos. 549 at 6 (1990) (governmental body may waive common-law informer's privilege), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). In failing to comply with section 552.301(b), you have waived the department's discretionary claims. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999). Therefore, the department may not

withhold any of the submitted information under section 552.108 or the common-law informer's privilege.

Next, we address your other claims under section 552.101 of the Government Code. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is made confidential by statute. You contend that the submitted information is confidential under section 261.201 of the Family Code. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You assert that the submitted information is confidential under section 261.201(a). In this instance, however, the information in question concerns alleged conduct that occurred in a facility regulated under chapter 42 of the Human Resources Code. *See id.* § 261.201(h). Section 261.201(a) is not applicable to an investigation of alleged child abuse or neglect in such a facility. *Id.* Thus, the submitted information is not confidential under 261.201 of the Family Code, and therefore the department may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

You also contend that the submitted information is confidential under section 261.101 of the Family Code. Section 261.101 makes confidential the identity of a person reporting alleged or suspected child abuse or neglect in accordance with the reporting requirements of chapter 261 of the Family Code. *See* Fam. Code §§ 261.101(a), (d), .103(a). We note that the department is an agency that is authorized to conduct an investigation under chapter 261. *See id.* §§ 261.301, .401. You seek to withhold all of the submitted information under section 261.101, arguing that "the identity of the identity of the individual making the report is so interwoven in the investigation that release of the documents will disclose the

individual's identity." We conclude, however, that withholding the information that we have marked will sufficiently protect the identity of the reporting party. The department must withhold that information under section 552.101 in conjunction with section 261.101 of the Family Code.

We also note that some of the submitted information is protected by the common-law right to privacy under section 552.101. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the private information that the department must withhold under section 552.101.

In summary: (1) the department must withhold the marked information that is confidential under section 552.101 in conjunction with section 261.101 of the Family Code; and (2) the department also must withhold the marked information that is protected by common-law privacy under section 552.101. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

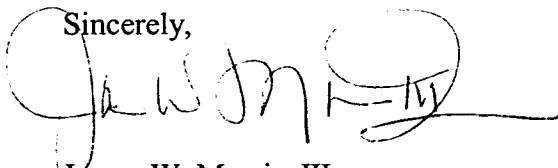
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'JWM', with a stylized flourish extending from the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 220016

Enc: Submitted documents

c: Ms. Stacey K. Ulry
1407 Quicksilver Circle
Round Rock, Texas 78664
(w/o enclosures)